

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KENNETH HALL,

Plaintiff,

v.

9:21-cv-00502 (AMN/ML)

C.O. NICHOLS and CO BELL,

Defendants.

APPEARANCES:

OF COUNSEL:

KENNETH HALL

Niagara County Jail
5526 Niagara Street Exd.
Lockport, New York 14094
(last known address)
Plaintiff *pro se*

LETITIA A. JAMES

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The Capitol
Albany, New York 12224
Attorneys for Defendants

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Hon. Anne M. Nardacci, United States District Judge:

ORDER

I. INTRODUCTION

Plaintiff Kenneth Hall (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 1983, alleging that Defendants, New York State Correction Officers tasked with transporting Plaintiff and other incarcerated individuals via bus, violated his constitutional rights by failing to protect him from injuries he sustained when another incarcerated individual attacked Plaintiff on that bus. Dkt No. 1 (“Complaint”). On April 5, 2023, Defendants moved to dismiss Plaintiff’s Complaint for failure

to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Dkt. No. 61 (the “Motion”). Plaintiff did not oppose the Motion. On October 18, 2023, United States Magistrate Judge Miroslav Lovric issued a Report-Recommendation and Order recommending granting the Motion and dismissing the Complaint. Dkt. No. 69 (the “Report-Recommendation”).

The Report-Recommendation was served on Plaintiff via regular mail at his last known address at the Niagara County Jail, *see* Dkt. No. 69, but was returned to the Court undelivered with a notation indicating: “return to sender | not deliverable as addressed | unable to forward.” Dkt. No. 70. No objections have been lodged, and the time to do so has expired.

For the reasons set forth below, the Court adopts the Report-Recommendation in its entirety.

II. LEGAL STANDARD

This Court reviews *de novo* those portions of a magistrate judge’s report-recommendations that have been properly preserved with a specific objection. 28 U.S.C. § 636(b)(1)(C); *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012). If no specific objections have been filed, this court reviews a magistrate judge’s report-recommendations for clear error. *See id.* at 229 (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition). “When performing such a clear error review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Dezarea W. v. Comm’r of Soc. Sec.*, No. 6:21-CV-01138 (MAD/TWD), 2023 WL 2552452, at *1 (N.D.N.Y. Mar. 17, 2023) (quoting *Canady v. Comm’r of Soc. Sec.*, No. 1:17-CV-0367 (GTS/WBC), 2017 WL 5484663, at *1 n.1 (N.D.N.Y. Nov. 14, 2017)). After appropriate review, “the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

As no party has filed objections to the Report-Recommendation, this Court reviews the Report-Recommendation for clear error.

In reaching his recommendation, Magistrate Judge Lovric considered each of the five factors courts in the Second Circuit use to adjudicate motions pursuant to Rule 41(b), *see id.* at 5-6 (citing, *inter alia*, *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996)), and found that each factor weighed in favor of dismissal, *id.* at 6-8.

Having reviewed the Report-Recommendation for clear error, and found none, the Court adopts the Report-Recommendation in its entirety.

III. CONCLUSION

Accordingly, the Court hereby

ORDERS that the Report-Recommendation, Dkt. No. 69, is **ADOPTED in its entirety**; and the Court further

ORDERS that Defendants' Motion to Dismiss, Dkt. No. 61, is **GRANTED**; and the Court further

ORDERS that Plaintiff's Complaint, Dkt. No. 1, is **DISMISSED**; and the Court further

ORDERS that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules and close the case.

IT IS SO ORDERED.

Dated: March 7, 2024
Albany, New York



Anne M. Nardacci
U.S. District Judge